***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

W.P.No.25325 of 2005

% 08-02-2006

Between:

N.Anil Kumar

…Petitioner

And

The Nizam Institute of Medical Sciences (NIMS)

Rep.by its Registrar, Panjagutta, Hyderabad & another

…Respondents

! COUNSEL FOR PETITIONER: Mr.L.Prabhakar Reddy

^ COUNSEL FOR RESPONDENTS: Mr.V.V.Prabhakar Rao, Standing Counsel.

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> Head Note:

? CITATIONS:

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO.25325 OF 2005

Dated 8th February 2006

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N.Anil Kumar S/o.Bhoomaiah

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THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO. 25325 OF 2005

O R D E R:

The petitioner challenges the action of the first respondent, in not admitting him in the I-year of Master of Physio Therapy Course (MPT Course). The qualification for admission into the MPT course is a pass in the Bachelor of Physio Therapy Course (BPT Course), and the selection is based on the performance of the candidates, in the entrance examination, held for this purpose. The petitioner studied BPT Course in Sri Venkateswara Institute of Medical Sciences, Tirupathi (SVIMS), and completed the same by June 2005. The entrance examination for MPT Course was held on 13.11.2005, and the petitioner secured 7th rank.

The first respondent is accorded the status of State-wide University, under the A.P. Educational Institutions (Regulation of Admissions) Order 1974, for short "the Presidential Order". In terms of clause 6 of the Presidential Order, admissions into the first respondent are to be made, by maintaining the ratio of 42:36:22, among the local candidates, in relation to the local areas of Andhra University, Osmania University and Sri Venkateswara University. The total number of seats available in MPT Course are 5. The controversy relates to the lone seat, that fell to the share of S.V. University local area. Petitioner states that he is the most meritorious candidate from the S.V.University local area, and despite the same, the first respondent had admitted the second respondent, who secured 11th rank.

The first respondent filed counter affidavit. It is stated that the petitioner is basically a local candidate of Osmania University area, and the period, during which the petitioner studied BPT Course, cannot be counted, to decide his local candidature. He stated that the BPT Course is treated as a course in a state-wide institution. After making a reference to the definition of local area under clause 3 of the Presidential Order, it is stated that any period, during which a candidate studied in a state-wide university or state-wide educational institution, cannot be reckoned, for this purpose. By furnishing the particulars of the study of the petitioner, up to Intermediate, it is contended that the petitioner is a local candidate of Osmania University.

Sri L.Prabhakar Reddy, learned counsel for the petitioner, submits that the Presidential Order, issued under Article 371-D of the Constitution of India, is clear in its purport, in the matter of defining state-wide universities and sate-wide educational institutions, and that the SVIMS or the BPT course imparted therein, are not treated as state-wide institutions. He contends that once SVIMS is not treated as a state-wide institution, the study of the petitioner, for 4 years, immediately preceding the qualifying examination for MPT course, would become deciding factor, and thereby, the petitioner is entitled to be treated, as a local candidate of S.V. University area.

Sri V.V.Prabhakar Rao, learned Standing Counsel for the first respondent, on the other hand, submits that ever since the BPT Course was introduced in SVIMS, it was treated as a

state-wide course, and the admissions were made on that basis. He contends that

though the petitioner studied in S.V. University area, for four consecutive years, immediately preceding the qualifying examination for MPT Course, that period has to be ignored, in terms of definition of local candidate, under clause 4 of the Presidential Order.

Though the second respondent was served with notice, he did not enter appearance.

The controversy in this writ petition, revolves around the question as to whether the SVIMS, in its entirety, or in relation to the BPT Course, is a state-wide institution, as defined under the Presidential Order. If the answer is not in the affirmative, the claim of the petitioner deserves to be rejected, and if it is in affirmative, the action of the first respondent, in selecting the second respondent, ignoring the merit of the petitioner, cannot be sustained.

The Constitution of India was amended, by introducing Article 371-D, for making special provisions in relation to State of Andhra Pradesh, with an object of maintaining a semblance of equilibrium among the three regions of the State, in the context of admissions into educational institutions and employment in the public service. The Presidential Order was issued in the year 1974, prescribing the manner in which Article 371-D shall be enforced, in the matter of admissions into educational institutions.

The expression “local candidate” is defined under clause 4 of the Presidential Order. The institutions are divided into two categories, *viz*. state-wide and non-state-wide. 85% of the seats in state-wide institutions are reserved in favour of local candidates, as defined under clause 4. State-wide Institutions, in turn, are of two categories, *viz*. State-wide University, as defined under clause 2(1)(f), and State-wide Educational Institution, as defined under clause 2(1)(e) of the Presidential Order. Clause 2(1)(f) by itself contains the list of state-wide universities, and the first respondent finds place in it. State-wide Educational Institutions are those, which are enlisted in the Schedule, appended to the Presidential Order. Instances are not lacking, where the institutions are non-state-wide in nature, but some of the courses run by them are treated as state-wide. For example, Dental, Neurosurgery, Public Health, and few other courses in the Osmania Medical College are treated as state-wide, though Osmania Medical College, as such, is not a state-wide university.

SVIMS, in its entirety, or in relation to BPT Course, is not included in the

Schedule. Once the SVIMS does not find place in clause 2(1)(f) of the Presidential Order, or in the Schedule to the Presidential Order, the BPT Course conducted in that institution, cannot be treated as a state-wide institution, or course. The first respondent proceeded on the basis that the said course is a state-wide in nature, and the study of the petitioner therein, cannot be reckoned for the purpose of deciding the local candidature of the petitioner. Therefore, the contingency, to exclude the period of study in a state-wide university, or a state-wide institution, which finds place in the definition of local area, under clause 3, does not arise, in the present context.

The only way in which the status of a state-wide university or state-wide institution, is by inclusion of the same in
clause 2(1)(f) of the Presidential Order, or in the Schedule thereof, as the case may be. The Presidential Order does not recognize any other procedure, or the manner, in which such a status can be conferred upon an institution. It is not as if the Presidential Order is an ordinary piece of subordinate legislation, to be dealt with, under the ordinary executive powers of the State. Any alteration of Presidential Order can take place, only with the specific consent of the President of India. In a way, it is protected by a greater procedural stringency, than an Act of the State legislature. Therefore, even if any agencies of the State have proceeded as though the course of BPT in SVIMS is a state-wide institution, the candidates who studied that course cannot be denied the status of the local candidates of the S.V.University area, in which, that institution is situated.

From the above, it emerges that the petitioner is a local candidate of S.V.University area, on account of his study of the BPT course in SVIMS. Therefore, his case has to be considered for the seat, which is allocated for S.V.University Area, in the MPT Course, in first respondent university, which is undisputedly a state-wide university. Being the most meritorious candidate from the local area, the petitioner ought to have been selected for the admission, in preference to the second respondent, whose rank
is 11.

Hence, the writ petition is allowed, and the first respondent is directed to consider the case of the petitioner, for admission into I-year of MPT Course, in the first respondent University, by treating him as local candidate of S.V. University area

and on the basis of the marks secured by him in the entrance examination. If it becomes inevitable for the first respondent, to cancel the admission of the second respondent in this process, it shall be open to it, to do so. There shall be no order as to costs.

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L.NARASIMHA REDDY, J

Dt.8th February 2006

Note: L.R.Copies be marked.

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